IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 26TH FEBRUARY 2007 / 7TH PHALGUNA 1928

WP(C).No. 1825 of 2007(P)

PETITIONER:

K.J.THOMAS, S/O.JOSEPH,
KUREEKKAL HOUSE, A.K.G.ROAD,
UNICHIRA, EDAPPALLY.

BY ADV. SRI.V.M.KURIAN
SRI.MATHEW B. KURIAN
SRI.K.T.THOMAS
SMT.TULASI PANICKER

RESPONDENTS:

---

1. KALAMASSERY MUNICIPALITY,
KALAMASSERY, REPRESENTED BY ITS SECRETARY.

2. THE SECRETARY,
KALAMASSERY MUNICIPALITY, KALAMASSERY.

3. THE MUNICIPAL COUNCIL,
KALAMASSERY MUNICIPALITY,
KALAMASSERY, REP. BY ITS CHAIRMAN.

BY SC SRI.M.K.ABOOBACKER.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 26/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C.KURIAKOSE, J.

W.P.(C)NO. 1825 of 2007

Dated this 26th day of February, 2007

JUDGMENT

Sri.M.K.Aboobacker, the learned Standing Counsel for the Municipality, submits that the Greater Cochin Development Authority has included a portion of the property upon which the building is now constructed by the petitioner in the alignment of the Edappally – Muvattupuzha Road and that was the reason why the Municipality issued Ext.P6 notice. But as rightly submitted by Sri.K.T.Thomas, the learned counsel for the petitioner, no notification under Section 4 (1) of the Land Acquisition Act and much less any declaration under Section 6 of the Act has so far been promulgated for acquisition of any portion of the property in question. Moreover, the reason mentioned in Ext.P6 for revoking the permit is not one of the reasons envisaged by Rule 16 of the Kerala Municipalities Building Rules.

2. Obviously there is no allegation that the approved plan has been violated while carrying out the construction. The

principles laid down by a Division Bench of this court in **Padmini v. State of Kerala (1999 (3) KLT 465)** and by the Supreme Court in **Raju S.Jethamalani and others v. State of Maharashtra and others (2005) 11 Supreme Court 222** will apply in this case also. Ext.P6, accordingly, is quashed and there will be a direction to the respondents to complete the proceedings for issuance of occupancy certificate and to number the building constructed by the petitioner as per Ext.P3 permit expeditiously at their earliest and at any rate within one month of receiving a copy of this judgment and of the petitioner filing an affidavit to the effect that if a notification under Section 4 (1) of the Land Acquisition Act is issued within one year of the permit for acquisition of any portion of the property, he will surrender the property without making any claims. It is however clarified that if there is any variation from Ext.P3, it will be open to the Municipality to take appropriate action. It is also clarified that this judgment will not stand in the way of the first respondent or the State from acquiring any portion of the petitioner's property even after a period of one year for any genuine public purposes in which case the petitioner will be entitled for adequate

compensation under the Land Acquisition Act.

The writ petition is disposed of as above.

PIUS C.KURIAKOSE
Judge

dpk